

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHERROD KEARNEY,

No. C 09-05308 CW (PR)

Petitioner,

ORDER OF DISMISSAL

v.

G. SWARTHOUT, Warden,

Respondent.

On November 9, 2009, Petitioner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also filed an "Ex Parte Application to Stay Proceedings Pending Exhaustion of State Court Remedies." On that same date, the Clerk of the Court sent Petitioner a notice directing him to pay the requisite \$5.00 filing fee or to file a completed in forma pauperis (IFP) application within thirty days or his action would be dismissed. More than thirty days have passed and Petitioner has not paid the filing fee, completed an IFP application, or otherwise communicated with the Court. The Court cannot conduct an initial review of this matter or respond to Petitioner's request for a stay because he has neither paid the filing fee nor completed an IFP application. See 28 U.S.C. § 1915(a) (a party is permitted to file a civil action in federal court without prepayment of fees or security if he makes affidavit that he is unable to pay such fees or give security therefor).

Accordingly, this action is DISMISSED WITHOUT PREJUDICE. The Clerk of the Court shall close the file.

IT IS SO ORDERED.



Dated: 12/10/09

CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SHERROD KEARNEY,

Case Number: CV09-05308 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

G. SWARTHOUT et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 10, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Sherrod Kearney F-26829
CSP-Solano
P.O. Box 4000
Vacaville, CA 95696-4000

Dated: December 10, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California